

1 Joseph Horne

2 P.O. Box 5102 (K.N.S.C.)

3 Delano, CA 93216

4 PRO-SE

FILED

FEB 28 2008

5 RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND6 United States District Court
7 Northern District of California.8 C
Joseph Horne
Petitioner,9 v.
10 Warden Robert Horne
11 Respondent.
12

13 Case No. 4:07-cv-04592-SBA

14 "Petitioner's
Application for Certification of Appealability
from the District Court; And Statement of
Reasons in Support."15 Introduction16 Pursuant to 28 USC §2253, Rule 22 FRAP, and Ninth
17 Circuit Rule 22-1, Petitioner, Joseph Horne
18 hereby request that the U.S. District Court
19 issue a certificate of appealability (hereinafter
20 "COA"), permitting Petitioner to appeal
21 from the non-judgment entered by the Hon.
22 Sandra Brown Armstrong, U.S. District Judge,
23 in the above entitled matter.24 Previously and/or concurrently with this
25 Application for COA, Petitioner has filed a
timely Notice of Appeal.26 Summary27 On the date of September 5th 2007 Petitioner
28

1 Joseph Weller, pro se, filed a federal writ of
 2 habeas corpus. Petitioner was then assigned
 3 to Hon. Sandra Brown Armstrong U.S. District
 4 Judge. It has been 5 months since the filing
 5 of said petition... and approximately 2½ since
 6 the petitioner has been served.
 7 U.S. District Judge has yet to make any
 8 ruling. The Hon. Judge has yet to grant or
 9 dismiss the petition with/without pre-
 10 judge. Nor, has the U.S. District Judge
 11 issued an order to show cause upon the
 12 respondent. The current case has been on
 13 pause for 5 months for reasons unknown
 14 to defendant/petitioner.

15 U.S. District Judge has failed to rule
 16 on all issues brought forth in current pet-
 17 iion. Specifically claim-class #1, claim #2, claim #3,
 18 claim #4, claim #5 and claim #6

Nature of claims

20 Class #1: Petitioner's 6th Amendment was violated
 21 and he was denied a fair trial when trial
 22 counsel failed to protectively cross-exam-
 23 ined. Petitioner was denied counsel while he
 24 was undergoing cross examination by the pros-
 25 ecutor.

26 Class #2: Petitioner was denied counsel
 27 during direct examination while he was
 28 on stand testifying for violation of his 5th, 6th and

1 14th Amendment provided by the U.S. Con.

2 claim #3: Defense counsel rendered ineffective
 3 assistance when he failed to object to
 4 hearsay evidence that co-defendant Samantha
 5 Smith pled guilty to the crime of accessory
 6 after the fact for shooting at Beverly Jones
 7 house. Trial court erred in admitting evidence
 8 of a non-testifying co-defendant's guilty plea.

9 claim #4: Defense counsel rendered ineffective
 10 assistance by failing to object to the verdict
 11 and sentence for the premeditated aspect of
 12 attempted murder on the grounds that the
 13 enhancement of premeditation was not
 14 pleaded as required in violation of both
 15 America's 14th, 5th and 6th Amendment.

16 These are the only claims I wish to
 17 take to the Ninth Circuit courts.

Conclusion

19 Petitioner prays that C.A. be granted by
 20 the U.S. District Court. Petitioner has raised
 21 several obvious U.S. Constitutional violations.
 22 Including denial of counsel at a critical
 23 stage of trial. U.S. vs. Cronec (1984) 466 U.S. 648
 24 "Denial of counsel at a critical stage of trial
 25 cannot be harmless." It was unjustifiably denied
 26 counsel at two critical stages of my trial.
 27 I was found guilty of a crime never charged.

Joseph Horne

Signed *[Signature]*
 Date: 1/21/2008

28 Apprendi v. New Jersey (2000)
 530 U.S. 436.

PROOF OF SERVICE BY MAIL

(C.C.P. Sec. 101a #2015-5, U.S.C. Sec. 1746)

I, Joseph Hause, am a resident of ~~Pelican Bay State Prison~~^{Kear Valley State Prison}, in the County of Del Norte, State of California. I am over the age of eighteen (18) years and am a party to this action.

My State Prison address is: ~~Pelican Bay State Prison, P.O. Box 7500, Housing Unit 8-8~~^{K.V.S.P. P.O. Box -5102} Cell Number ~~215, Crescent City, CA 95532-7500~~^{Devano, CA 93216}.

On the 24 day of January 2008, I served the following (set forth the exact title of document[s] served):

United States District Court
Northern District of California.
Motion for Notice of Appeal.

On the party(s) herein by placing a true copy(s) thereof, enclosed in a sealed envelope(s), with postage thereon fully paid, in the United States mail, in a receptacle so provided at ~~Pelican Bay State Prison, Crescent City, CA 95532~~^{K.S.V.P.}, and addressed as follows:

United States District
Court Northern District
of California.
1301 Clay St Suite 400S
Oakland, CA 94612-5212

I declare under penalty of perjury that the foregoing is true and correct:

John Hause
Inmate Signature

1/24/08
Date

Page Number: 1

Ma. Sociedad Hocico #V-841328
H.V.S.C. 2-8/11/8
P.O. Box -5102
Dacca, C.R. 93216



2000 FEB 25 PM 3:20

RICHARD J. ING
U.S. DISTRICT COURT
U.S. DISTRICT COURT, S.J.
NO. DIST. OF CA. S.J.

✓
✓
✓

95113-3095
S115b 09
50000 40000 60000
280. 2700 4700
collected
Nikon 14300
Presto 14300
Ogilvie & Co. 14300
20000 20000 20000

Voc
Nar